

Ordinance 05-30

AN ORDINANCE TO ESTABLISH OVERLAY ZONE DISTRICTS AND REGULATIONS FOR STORM WATER MANAGEMENT

WHEREAS, The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the City of Westfield through the regulation of Non-Stormwater Discharges to the Maximum Extent Practicable as required by federal and state law; and

WHEREAS, This ordinance establishes methods for controlling the introduction of Pollutants into the City of Westfield Municipal Separate Storm Sewer System (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) program authorized by the 1972 amendments to the Clean Water Act, the Indiana Department of Environmental Management's Rule 13 (327 IAC 15-13), and the Indiana Department of Environmental Management's Rule 5 (327 IAC 15-5); and

- (1) WHEREAS, To prohibit the release of Pollutants to the MS4 from construction activity.
- (2) WHEREAS, To prohibit the release of Pollutants to the MS4 from post construction runoff.
- (3) WHEREAS, To prohibit Illicit Discharges into the MS4.
- (4) WHEREAS, To establish legal authority to carry out all inspection, monitoring, and enforcement procedures necessary to ensure compliance with this ordinance.

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Westfield, Hamilton County, Indiana, meeting in regular session as follows:

TOWN OF WESTFIELD STORMWATER MANAGEMENT ORDINANCE

BE IT ORDAINED by the City Council of the City of Westfield, Hamilton County, Indiana:

Section 1. PURPOSE AND INTENT

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the City of Westfield through the regulation of Non-Stormwater Discharges to the Maximum Extent Practicable as required by federal and state law. This ordinance establishes methods for controlling the introduction of Pollutants into the City of Westfield Municipal Separate Storm Sewer System (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) program authorized by the 1972 amendments to the Clean Water Act, the Indiana Department of Environmental Management's Rule 13 (327 IAC 15-13), and the Indiana Department of Environmental Management's Rule 5 (327 IAC 15-5). The objectives of this ordinance are:

1. To prohibit the release of Pollutants to the MS4 from construction activity.
2. To prohibit the release of Pollutants to the MS4 from post construction runoff.
3. To prohibit Illicit Discharges into the MS4.
4. To establish legal authority to carry out all inspection, monitoring, and enforcement procedures necessary to ensure compliance with this ordinance.

Section 2. DEFINITIONS

For the purposes of this ordinance, the following shall mean:

Best Management Practices (BMPs). Structural or nonstructural practices, or a combination of practices, designed to act as effective, practicable means of minimizing the impacts of development and human activities on water quality. Traditional structural BMPs, including extended detention dry ponds, wet ponds, infiltration trenches, and sand filtration systems, are now common elements of most new development projects. Structural BMPs rely heavily on gravitational settling and/or the infiltration of soluble nutrients through a porous medium for pollutant removal. Nonstructural BMPs, which may be used independently or in conjunction with structural BMPs, rely on a much wider breadth of mechanisms to prevent or control NPS pollution. Nonstructural BMPs range from programs that increase public awareness to prevent pollution, to the implementation of control-oriented techniques (such as bioretention and stormwater wetlands) that utilize vegetation to enhance pollutant removal and restore the infiltrative capacity of the landscape.

Clean Water Act (CWA). The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

Construction Activity. Activities subject to a Stormwater Management Permit. These include construction projects resulting in land disturbance of ¼ acre or more. Such

activities include but are not limited to clearing and grubbing, grading, excavating, and demolition. This term does not include routine ditch or road maintenance or minor landscaping projects, agricultural land disturbing activities, forest harvesting activities, or individual building lots within a larger permitted project.

Entity. An individual, association, organization, partnership, firm, corporation, or other person or group of persons recognized by law and acting as either the owner or as the owner's agent.

Illicit Discharge. A direct or indirect Non-Stormwater or Pollutant Discharge to the Storm Drainage System, MS4, or Receiving Waters except as exempted in Section 11 of this ordinance.

Illicit Connections. An Illicit Connection is defined as either of the following:
A Stormwater Conveyance System, which allows an Illicit Discharge to enter the Storm Drainage System or the MS4, including but not limited to any conveyances which allow any Non-Stormwater Discharge and any connections to the Storm Drainage System, MS4, or Receiving Waters from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the City of Westfield or, any conveyance connected from a commercial or industrial land use to the Storm Drainage System, MS4, or Receiving Water which has not been documented in plans, maps, or equivalent records and approved by the City of Westfield.

Inspecting Authority. A City of Westfield representative or any other person authorized by the City of Westfield to perform inspections.

Industrial Activity. Activities subject to NPDES Industrial Permits as defined by 327 IAC 15-6-1:12 (Rule 6).

Maximum Extent Practicable (MEP). The statutory standard that establishes the level of Pollutant reductions that operators of regulated MS4s must achieve. The CWA requires that NPDES Stormwater Discharge Permits for discharges from MS4s "shall require controls to reduce the discharge of Pollutants to the Maximum Extent Practicable, including management practices, control techniques and system, design and engineering methods." This standard applies to all MS4s regulated under the Phase I and Phase II (Rule 13) Stormwater rules. Compliance with the conditions of Rule 13 and the series of steps associated with implementation of the required six minimum control measures will satisfy the MEP standard. Compliance with the six minimum control measures requires the development and implementation of BMPs. Implementation of the BMPs includes not only the actions necessary to initiate and continue the use of specific control measures, but also, the enforcement actions, as applicable, to ensure that the implementation of the control measures occurs.

Measurable Storm Event. Means a precipitation event that results in a total measured precipitation accumulation equal to, or greater than, one-half (0.5) inch of rainfall.

Municipal Separate Storm Sewer System (MS4). A Stormwater Conveyance System which is owned or operated by a state, city, town, county, tribe, district, association, or other public body or a designated and approved management agency under Section 208 of the Clean Water Act that discharges into Waters of the United States (40 CFR 122.26(b)(8)).

National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit. A permit issued by EPA (or by a State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of Pollutants to Waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-Stormwater Discharge. Any discharge to the Stormwater Conveyance System that is not composed entirely of Stormwater including, but not limited to: sewage, process wastewater, washwater, water containing pollutants, or any other liquid, other than uncontaminated Stormwater, discharged from a facility.

Notice of Intent (NOI). A written notification indicating an Entity's intention to comply with the terms of a specified general permit rule in lieu of applying for an individual NPDES Stormwater Discharge Permit and includes information as required under 327 IAC 15-3 and the applicable general permit rule.

Pollutant. Anything that causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes; yard wastes, including grass, brush, leaves, and limbs; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, and accumulations, so that same may cause or contribute to pollution; floatables, pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; soil and sediments; and noxious or offensive matter of any kind.

Premises. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Receiving Waters. Watercourses or Waters of the United States, or any body of water into which Stormwater is discharged.

Storm Drainage System. A non-MS4 Stormwater conveyance system that ultimately discharges to an MS4.

Stormwater Conveyance Systems. System of subsurface drainage systems, catch basins, and other drainage structures including retention and detention facilities, municipal streets, catch basins, curbs, gutters, roads with subsurface drainage systems, reservoirs, pumped piping systems, other drainage structures or watercourse.

Stormwater Pollution Prevention Plan (SWPPP). A document which describes the Best Management Practices and activities to be implemented by an Entity to identify sources of pollution or contamination at a site and the actions to eliminate or reduce Pollutant discharges to Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

Technical Review and Comment Form: A form issued by the City of Westfield stating the SWPPP is adequate or stating revisions needed in the SWPPP.

Trained Individual. An individual who is trained and experienced in the principles of Stormwater quality, including erosion and sediment control as may be demonstrated by state registration, professional certification, experience, or completion of coursework that enable the individual to make judgments regarding Stormwater control or treatment and monitoring.

Watercourse. A conduit through which water flows, natural body of running water flowing on or under the earth or a natural or artificial channel through which water flows.

Waters of the United States. A term used in federal regulations that defines all water bodies regulated as waters of the U.S. It includes: (1) all waters which may be susceptible to use in interstate or foreign commerce; (2) all interstate waters, including interstate wetlands; (3) all other waters, such as intrastate lakes, rivers, streams (including intermittent streams), mud flats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds; the use, degradation, or destruction of which could affect interstate or foreign commerce including any such waters; (4) all impoundments of waters otherwise defined as waters of the U.S.; (5) tributaries of waters identified in this section; (6) the territorial seas; (7) wetlands adjacent to waters.

Section 3. APPLICABILITY

This ordinance shall apply to all Construction Activity, direct or indirect Stormwater discharges, and Illicit Discharges entering the Storm Drainage System, MS4, or Receiving Waters under the jurisdiction of the City of Westfield.

The City of Westfield, by and through its City Council, has the authority to modify, grant exemptions, and/or waive any and all the requirements of this Ordinance. A meeting with the City of Westfield Public Works Department may be requested by an Entity to discuss the applicability of various provisions of the Ordinance with regards to unique or unusual circumstances. However, any initial determination of such applicability shall not be binding on future determinations of the City of Westfield Public Works Department that may be based on the review of more detailed information and plans.

Section 4. NPDES STORMWATER DISCHARGE PERMIT

Any Entity subject to an NPDES Stormwater Discharge Permit shall comply with all provisions of such permit and the provisions of this ordinance if the provisions of this ordinance are more restrictive than the NPDES Stormwater Discharge Permit. Proof of compliance with said permit and this ordinance may be required in a form acceptable to the City of Westfield prior to allowing discharges to the MS4.

Section 5. RESPONSIBILITY FOR ADMINISTRATION

The City of Westfield shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the City of Westfield may be delegated in writing by the City Council of the City of Westfield to persons acting in the beneficial interest of or in the employ of the agency.

Section 6. CONFLICTING ORDINANCES

The provisions of this ordinance shall be deemed as additional requirements to minimum standards required by other City of Westfield codes and ordinances, and as supplemental requirements to Indiana's Rule 5 regarding Stormwater Discharge associated with Construction Activity and Indiana's Rule 13 regarding Stormwater runoff associated with MS4 conveyances. In case of conflicting requirements, the most restrictive shall apply. Unless otherwise stated, the most recent versions or editions of said codes, ordinances, laws, and statutes shall apply.

Section 7. STORMWATER DESIGN MANUAL

The City of Westfield Utility and Infrastructure Construction Standards and Specifications Manual, and amendments thereto, are hereby incorporated herein by reference, with copies of the same being maintained in the Department of Public Works for public inspection during regular business hours.

Section 8. INTERPRETATION

Words and phrases in this Ordinance shall be construed according to their common and accepted meanings, except that words and phrases defined in "Definitions" shall be construed according to the respective definitions given in that section. Technical words and technical phrases that are not defined in this Ordinance but which have acquired particular meanings in law or in technical usage shall be construed according to such meanings and as defined in 327 IAC 15-13 and 327 IAC 15-5 of the Indiana Code and other City of Westfield Codes and Ordinances.

Section 9. SEVERABILITY

The provisions of this Ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person,

establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

Section 10. ULTIMATE RESPONSIBILITY

The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore, this Ordinance does not intend nor imply that compliance by any Entity will ensure that there will be no contamination, pollution, nor unauthorized discharge of Pollutants. The degree of protection required by this Ordinance is considered reasonable for regulatory purposes. This Ordinance shall not create liability on the part of City of Westfield or any officer, representative, or employee thereof, for any damage that may result from reliance on this Ordinance or on any administrative decision lawfully made there under.

Section 11. DISCHARGE PROHIBITIONS

A. Prohibition of Illicit Discharges.

1. No Entity shall discharge directly or indirectly or cause to be discharged into the Storm Drainage System, MS4, or Receiving Waters any materials, including but not limited to, Pollutants or Non-Stormwater discharges that cause or contribute to a violation of applicable water quality standards, other than Stormwater.
2. The commencement, conduct or continuance of any Illicit Discharge to the Storm Drainage System, MS4, or Receiving Waters is prohibited except as described as follows:
 - a. The following discharges are exempt from the requirements of this Section: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wetland flows, swimming pools (if dechlorinated – typically less than one PPM chlorine), firefighting activities, and any other water source not containing Pollutants.
 - b. Discharges specified in writing by the City of Westfield as being necessary to protect public health and safety.
 - c. Dye testing is an allowable discharge, but requires a verbal notification to the City of Westfield prior to the time of the test.
 - d. The prohibition shall not apply to any Non-Stormwater Discharge permitted under an NPDES Stormwater Discharge Permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, including this

ordinance, and provided that written approval has been granted for any discharge to the Storm Drainage System, MS4, or Receiving Waters.

B. Prohibition of Illicit Connections.

1. The construction, use, maintenance, or continued existence of Illicit Connections is prohibited.
2. This prohibition expressly includes, without limitation, Illicit Connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
3. An Entity is in violation of this ordinance if the Entity makes an Illicit Connection or allows such a connection to continue after service of a notice of violation. This ordinance requires an immediate cessation of the Illicit Connection after service of the notice of violation.

Section 12. WATERCOURSE PROTECTION

A. Improvement of Watercourse

Whenever a residential subdivision or commercial development constructs improvements upon lands, which is traversed by a watercourse, the landowner/developer shall make improvements to said watercourse. These improvements shall consist of the following:

1. All debris and obstructions within the channel (bank to bank) shall be removed. This shall include but not be limited to logjams and trash.
2. Clear all trees which are dead and leaning at a 45 degree or greater angle or trees with roots that are exposed in the channel and potentially will fall into the stream. In clearing, the tree shall be cut flush with the ground and treated with an EPA-approved brush killer.
3. All stream bank erosion shall be repaired in an acceptable manner approved by the City of Westfield.
4. The above required improvements must be reflected on the overall design plans for the development and submitted to the Town of Westfield for prior approval.

B. Maintenance of Watercourse

Entities owning property through which a Watercourse passes, or such an Entity's lessee, shall keep and maintain that part of the Watercourse. In addition, the Entity or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse. The Entity or lessee shall not place or construct a privately owned structure(s) or other impairment(s) within or adjacent to the Watercourse such that is an impairment or a detriment to the use, function, or physical integrity of the watercourse. The Entity or lessee shall not place or construct a privately owned structure(s) or other impairments within or adjacent to the Watercourse such that it is impairment or a detriment to the watercourse.

Section 13. STORAGE OF POLLUTANTS

Storage or stockpiling of pollutants within any floodplain district is strictly prohibited. Storage or stockpiling of pollutants on active construction sites must include adequate protection and/or containment so as to prevent any such materials from entering any temporary or permanent stormwater conveyance or watercourse.

Section 14. ACCESS TO FACILITIES

- A. The City of Westfield shall be permitted to enter and inspect any Premises subject to regulation under this ordinance or subject to the conditions of a NPDES Stormwater Discharge Permit as often as may be necessary to determine compliance with this ordinance. If a said Premise has security measures in force, which require proper identification and clearance before entry into its Premise, the owner of said Premise shall make the necessary arrangements to allow access to representatives of the City of Westfield.
- B. The City of Westfield shall be provided ready access to all parts of the Premises for the purposes of inspection, sampling, examination and provided access to all records that must be kept under the conditions of a NPDES Stormwater Discharge Permit or this Ordinance and shall be permitted to make copies of said records, and the performance of any additional duties as defined by state and federal law and any other applicable codes, ordinances, or laws which would otherwise have jurisdiction over the provisions of this ordinance.
- C. Unreasonable delay or refusal to allow the City of Westfield access to a Premise subject to regulation under this ordinance or subject to the conditions of a NPDES Stormwater Discharge Permit is a violation of this ordinance.
- D. If the City of Westfield has been refused access to any part of the Premise, and The City of Westfield is able to demonstrate probable cause to believe that there may be a violation of this Ordinance, or that there is a need to inspect and/or sample any discharges as part of an inspection and sampling program developed to verify compliance with this Ordinance or any order issued hereunder, and/or to protect the overall public health, safety, and welfare of the City of Westfield, then the City of Westfield may seek issuance of a search warrant from any court of competent jurisdiction.
- E. Any temporary or permanent obstruction to safe and easy access to the Premise to be inspected and/or sampled shall be promptly removed by the owner of the Premises at the written or oral request of the City of Westfield and shall not be replaced. The costs of clearing such access shall be borne by the owner of the Premise.
- F. It shall be unlawful for the Entity of any Premise to refuse to allow the City of Westfield to enter upon the Premise for the purposes set forth in Section 27 of this Ordinance.

Section 15. MONITORING OF DISCHARGES

- A. The City of Westfield shall have the right to install on any Premise, such devices as are necessary in the opinion of the City of Westfield to conduct monitoring and/or sampling of the Premise's discharge.
- B. The City of Westfield reserves the right to require the Entity of said Premise to install monitoring equipment as necessary. The Premise's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the Entity at the expense of the Entity. Data resulting from said monitoring shall be provided to the City of Westfield. All devices used to measure flow and quality shall be calibrated to ensure their accuracy.

Section 16. REMOVAL OF MUD AND OTHER SUBSTANCES FROM TOWN STREETS

No entity shall, under any circumstance, cause any mud, dirt, sand, gravel, stone or other similar substance to be deposited upon any City street at any time.

Section 17. REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORMWATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES

Any Entity responsible for a premise, which is, or may be, the source of an Illicit Discharge shall provide, at their own expense, reasonable protection from an Illicit Discharge through the use of acceptable Best Management Practices (BMPs), as determined by the City of Westfield. Acceptable BMPs are outlined in the City of Westfield Utility and Infrastructure Construction Standards and Specifications Manual. This shall include any premise having an approved NPDES Stormwater Discharge Permit.

Section 18. NOTIFICATION OF SPILLS

Any Entity who knowingly or accidentally causes an illicit discharge shall immediately notify emergency dispatch services. A written report concerning the Illicit Discharge shall be filed with the City of Westfield Public Works Department, by the dischargers, within five (5) days. The written report shall specify:

- A. The composition of the discharge and the cause thereof;
- B. The date, time, and estimated volume of the discharge;
- C. All measures taken to remedy the Illicit Discharge, and all measures proposed to be taken to prevent any recurrence;
- D. The name and telephone number of the Entity making the report, and the name and telephone number of the Entity who may be contacted for additional information on the matter.

A properly reported Illicit Discharge shall be an affirmative defense to a civil infraction proceeding brought under this Ordinance against an Entity for such discharge. It shall not, however, be a defense to a legal action brought to obtain an injunction, to obtain recovery of costs or to obtain other relief because of or arising out of the Illicit Discharge. An Illicit Discharge shall be considered properly reported only if the Entity complies with all the requirements of this section. This requirement does not relieve the Entity from notifying other agencies as required by State or Federal regulations.

Section 19. STORMWATER MANAGEMENT PERMIT REQUIREMENTS AND PROCEDURES

An approved Stormwater Management Permit shall be obtained prior to the initiation of any Construction Activities. In order to obtain a Stormwater Management Permit, the applicant shall be the Entity responsible for accomplishing the Construction Activity for which the Stormwater Management Permit was issued. In granting a Stormwater Management Permit, the City of Westfield may impose such terms and conditions as are reasonably necessary to meet the purpose of this Ordinance. The Entity shall insure compliance with such terms and conditions. Non-compliance with the terms and conditions of permits will be subject to enforcement as described in Section 23 of this ordinance. The Entity shall inform all general contractors, construction management firms, grading or excavating contractors, utility contractors, and the contractors that have primary oversight on individual building lots of the terms and conditions of the Stormwater Management Permit and the schedule for proposed implementation.

- A. The project site owner must submit an application for a Stormwater Management Permit to the City of Westfield and IDEM, including an Initial Notice of Intent (NOI), construction plan sheets, stormwater drainage technical report, a Stormwater Pollution Prevention Plan (SWPPP) for active construction sites, a post-construction SWPPP, and the applicable permit fees to the City of Westfield (City of Westfield's Inspection Fees Ordinance). All plans, reports, calculations, and narratives shall be prepared in accordance with the City of Westfield Utility and Infrastructure Construction Standards and Specifications Manual and signed and sealed by a professional engineer, registered by the State of Indiana.
- B. The City of Westfield will review each application for a Stormwater Management Permit to determine its conformance with the provisions of this Ordinance. The City of Westfield will take one of the following actions:
 1. Approve the SWPPP for active construction sites and for post-construction and provide a Technical Review and Comment Form stating the "Plan is Adequate".
 2. Approve the SWPPP for active construction sites and for post-construction subject to such reasonable conditions as may be necessary to secure substantially the objectives of this Ordinance, and issue the Technical Review and Comment Form stating the "Plan is Adequate" with said conditions outlined.
 3. Provide a Technical Review and Comment Form stating the "Plan is Deficient" and indicating the reason(s) and procedure for submitting a revised application and/or submission.

Any changes or deviations in the detailed plans and specifications after approval of the applicable Stormwater Management Permit shall be filed with, and accepted by, the City of Westfield prior to the commencement of Construction Activity involving the change. Applicable plan review fees are due in accordance with the City of Westfield's Inspection Fee Ordinance before any plan will be approved.

- C. After receiving a Technical Review and Comment Form stating the "Plan is Adequate", the project site owner must notify the City of Westfield and IDEM 48 hours before beginning construction. Notification shall be in the form of an updated NOI form along with proof of publication of public notice. The applicant is also responsible for any IDEM-required NOI fee. The publication must include the following:

“(Company name, address) is submitting an NOI letter to notify the City of Westfield and the Indiana Department of Environmental Management of our intent to comply with the requirements of the City of Westfield Stormwater Management Ordinance, as well as the requirements of 327 IAC 15-5 and 327 IAC 15-13, to discharge stormwater from construction activities for the following project: (name of the construction project, address of the location of the construction project, and Parcel Identification Number). Run-off from the project site will discharge to (stream(s) receiving the discharge(s)).”

Once a permit has been issued and the updated NOI submitted to the City of Westfield and IDEM 48 hours before beginning construction, construction may commence. A stop work order per Section 24 shall be issued by the City of Westfield for all projects that are proceeding without such notification.

- D. Once construction starts, the project owner shall monitor construction activities and inspect all stormwater pollution prevention measures in compliance with the City of Westfield's applicable ordinances and the terms and conditions of the approved permit. Lack of maintenance of stormwater pollution prevention measures during construction or failure to implement the approved SWPPP by the approved schedule of implementation shall constitute a violation of this ordinance, subject to enforcement under the provisions of this ordinance.
- E. Upon completion of construction activities, as-built plans must be submitted to the City of Westfield.
- F. The Entity must submit a Notice of Termination (NOT) letter to the City of Westfield once the construction site has been stabilized and all temporary erosion and sediment control measures have been removed. The City of Westfield shall inspect the construction site and verify the requirements for an NOT have been met. Once the applicant receives a "verified" copy of the NOT, they must forward a copy to IDEM.

Section 20. INDIVIDUAL LOT PLOT PLAN PERMIT REQUIREMENTS AND PROCEDURES

For individual lots disturbing less than one (1) acre, developed within a larger permitted project, a formal review and issuance of an Individual Lot Plot Plan Permit will be required before a building permit can be issued. The individual lot owner must complete a Residential Lot Plot Plan Permit Request, containing the certified site layout for the subject lot and an erosion and sediment control plan in accordance with the City of Westfield Utility and Infrastructure Construction Standards and Specifications Manual, the name and contact information for the trained individual in charge of the stormwater pollution prevention self-monitoring program for the individual lot. In submitting the individual lot plot plan for plan review, applicable fees for the permit, plan review, and site inspections are due in accordance with the City of Westfield's Inspection Fee Ordinance. These fees are due before approval for a plan can be issued. The individual lot owner is responsible for installation and maintenance of all erosion and sediment control measures until the site is stabilized. In instances where an NOT has been issued to the developer and there are multiple lots being developed and a violation of this ordinance occurs that cannot be attributed to an individual lot owner, then all lot owners with active construction shall, collectively, be found in violation.

11As a condition of approval and issuance of the permit, the City of Westfield shall require the applicant to provide financial performance and maintenance guarantees. Said assurance will guarantee a good faith execution of the stormwater drainage plan, the SWPPP, the stormwater quality management plan, and any permit conditions.

Notice of the scheduled date for completion of construction shall be provided to the department at least seventy-two (72) hours prior to its planned completion. The owner will schedule the final inspection, the storm drain and site grading performance sureties will be released after submittal and approval by the City of Westfield Public Works Department of the following information:

1. "Record" drawings prepared under the supervision of and certified by a Professional Engineer registered in the State of Indiana.
2. For subdivided and platted or developments larger than five (5) acres, a copy of the storm drain maintenance bond in a form approved by the jurisdictional entity.
3. A "Certificate of Completion and Compliance" certifying that the completed storm drainage system and stormwater management facilities substantially comply with construction plans and the stormwater management permit as approved by the City of Westfield Public Works Department.

For platted single- and double-family developments, the performance surety for installation of required erosion and sediment control measures will be released only after construction has been completed, inspected by the City of Westfield Public Works Department and a three-year maintenance bond has been submitted for approval. Bonds are required for each individual section of the development.

The property owner, developer, or contractor shall be required to file a three-year maintenance bond with the City of Westfield, prior to final project acceptance (the issuance of a verified “NOT”).

Section 22. CONSTRUCTION ACTIVITY INSPECTION

- A. A self-monitoring program shall be implemented. A Trained Individual shall perform a written evaluation of the project site by the end of the next business day following each Measurable Storm Event. If there are no Measurable Storm Events within a given week, the site should be monitored at least once in that week.
- B. The evaluation shall document the maintenance efforts of existing Best Management Practices to ensure proper function in accordance with this ordinance; and identify additional measures necessary to remain in compliance with all applicable statutes and rules.
- C. Written evaluation reports include the following:
 - 1. The name of the individual performing the evaluation;
 - 2. The date of the evaluation;
 - 3. Problems identified at the project site; and
 - 4. Details of corrective actions recommended and completed
- D. All evaluation reports for the project site shall be made available to the City of Westfield within forty-eight (48) hours of a request.
- E. The City of Westfield will perform inspections at their discretion to evaluate the installation, implementation, and maintenance of control measures and management practices at any project site involved in Construction Activities and provide necessary recommendations for conformance with the provisions of this ordinance and the Stormwater Management Permit. Access to the construction project site shall be provided in accordance with Section 14 of this Ordinance.
- F. If after a recommendation is provided to the Entity, corrective action is not taken; the City of Westfield will pursue enforcement in accordance with this ordinance.

Section 23. POST CONSTRUCTION STORMWATER QUALITY MANAGEMENT

The City of Westfield has established a minimum standard that the measurement of the effectiveness of the control of stormwater quality will be based on the management of Total Suspended Solids (TSS). The project site owner must submit to the City of Westfield, a post-construction SWPPP that would show placement of appropriate BMP(s) from a pre-approved list of BMPs specified in City of Westfield Utility and Infrastructure Construction Standards and Specifications Manual and would demonstrate that the expected TSS loadings in runoff associated with one inch of rainfall will be reduced by a minimum of 80% at the outfall(s) exiting the site. The noted BMPs must be designed, constructed, and maintained according to guidelines provided or referenced in the City of Westfield Utility and Infrastructure Construction Standards and Specifications Manual. Practices other than those specified in the pre-approved list may be utilized. However, the burden of proof, as to whether the performance (minimum 80% TSS removal) and ease of maintenance of such practices will be according to guidelines provided in the City

of Westfield Utility and Infrastructure Construction Standards and Specifications Manual, would be placed with the applicant. Details regarding the procedures and criteria for consideration of acceptance of such BMPs are provided in the City of Westfield Utility and Infrastructure Construction Standards and Specifications Manual.

Gasoline outlets and refueling areas must install appropriate practices to reduce lead, copper, zinc, and hydrocarbons in stormwater runoff. These requirements will apply to all new facilities and existing facilities that replace their tanks.

The following activities are exempt from the requirements of this Section:

- A. agricultural land-disturbing activities; or
- B. timber harvesting activities not associated with a proposed new development; or
- C. construction activities associated with a single family residential dwelling disturbing less than 5 acres, when the dwelling is not part of a larger common plan of development or sale; or
- D. a single-family residential strip development where the developer offers for sale or lease without land improvements and the project is not part of a larger common plan of development or sale; or
- E. individual building lots within a larger permitted project.

Section 24. BMP MAINTENANCE

BMPs shall be maintained in good condition, in accordance with the Operation and Maintenance procedures and schedules listed in the Indiana Stormwater Quality Manual or the City of Westfield Utility and Infrastructure Construction Standards and Specifications Manual, and the terms and conditions of an approved Stormwater Management Permit, and shall not be subsequently altered, revised, or replaced. Alterations, revisions, or replacement of the BMP shall be in accordance with the provisions of an approved Stormwater Management Permit (as amended or revised) or as approved by the City of Westfield. The BMP owner is considered in violation of this ordinance if the BMP is not maintained properly.

Following the issuance of an NOT or the installation of an acceptable BMP, inspection and maintenance of the BMP(s) shall be the long-term responsibility of the HOA or Entity as specified in restrictive covenants. The HOA or Entity is required to inspect the referenced BMP(s) at least once per year. The inspections shall follow the Operation and Maintenance procedures included in the City of Westfield Utility and Infrastructure Construction Standards and Specifications Manual and/or the Stormwater Management Permit for each specific BMP. The inspection shall cover physical conditions, available water quality storage capacity, and the operational condition of key facility elements. The HOA or Entity is required to submit a yearly inspection report form (City of Westfield Utility and Infrastructure Construction Standards and Specifications Manual) demonstrating proof of inspection, with the first report to be required one year after the HOA or Entity gains ownership of the BMP(s), and subsequent reports due each year within the month of the original transfer of ownership. Noted deficiencies and corrective actions taken should be included in the report.

The City of Westfield has the authority to perform long-term inspection of all public or privately owned BMPs. Such inspections will be in addition to that required to be performed by the HOA or the Entity on a regular basis. The HOA or Entity is in violation of this ordinance if an inspection report is not submitted to the City of Westfield within one month of the date due, if the HOA or Entity fails to correct noted deficiencies within the allowed time period, or if the City of Westfield identifies a violation that was stated as not existing in the submitted inspection report.

Section 25. NOTICE OF VIOLATION

- A. In the event an Entity has violated the terms of this Ordinance, the City of Westfield may order compliance by written Notice of Violation to the Entity. Such notice may require without limitation:
 - 1. The performance of monitoring, analyzing, and reporting;
 - 2. The elimination of Illicit Connections or Illicit Discharges;
 - 3. That Illicit Discharges shall cease and desist;
 - 4. The abatement or remediation of the Illicit Discharge and the restoration of any affected property;
 - 5. Payment of a fine;
 - 6. The implementation of source control and/or installation of acceptable BMPs;
 - 7. Payment of any costs borne by the City of Westfield, including but not limited to, remediation costs, legal fees, consultant fees, monitoring costs, construction costs, collection fees; and/or
 - 8. The installation, implementation, and or maintenance of the approved components of a SWPPP or other erosion and sediment control practices as deemed necessary by the City of Westfield.
 - 9. Issuance of a Stop Work Order.
 - 10. Revocation or suspension of the Stormwater Management Permit.
- B. The City of Westfield may, without prior Notice of Violation, suspend Storm Drainage System or MS4 access to an Entity in the form of a Suspension Order when such suspension is necessary to stop an actual or threatened Illicit Discharge which presents or may present imminent and substantial danger.
- C. The Notice of Violation or Suspension Order shall:
 - 1. Be in writing;
 - 2. Include a description of the property for identification;
 - 3. Include a statement of the violation(s) and section violated and why the notice or order is being issued;
 - 4. Include a description of corrective actions to be taken allowing a sufficient reasonable amount of time, of at least one (1) day from the time the Notice of Violation or Suspension Order is given, to make the repairs and improvements required to bring the property into compliance with the provisions of this ordinance; and
 - 5. Include a notice containing the right to appeal the City of Westfield's determination to the Westfield City Council in accordance with Section 25 of this ordinance.

- D. Reinspection of remedied violations will be assessed a reinspection fee in accordance with the City of Westfield Inspection Fee Ordinance.
- E. If the Entity fails to comply with a Suspension Order or fails to perform steps provided in a Notice of Violation within the established deadline, then the City of Westfield may take steps as deemed necessary to prevent or minimize damage or remediate a violation. All reasonable costs associated with the abatement or restoration shall be assessed against the owner of the property and may be filed as a lien against the property in the amount of the assessment. It shall be unlawful for any Entity, owner, agent or person in possession of any Premise to refuse to allow the City of Westfield or its designated contractor to enter upon the Premise for the purposes set forth above.
- F. In the event of a Suspension, the City of Westfield shall not reinstate suspended services or MS4 access to the Entity until the Entity presents proof, satisfactory to the City of Westfield, the Illicit Discharge has been eliminated and its cause determined and corrected. An Entity violates this ordinance if the Entity reinstates MS4 access to Premises terminated pursuant to this section, without the prior approval of the City of Westfield.
- G. In addition to the penalties listed above, if Construction Activities are conducted contrary to the provisions of this Ordinance or a Stormwater Management Permit, the City of Westfield may order the work stopped by notice in writing, in the form of a Stop Work Order, served on any Entity engaged in the doing or causing of such work to be done, and any such Entity shall forthwith stop such work until authorized by the City of Westfield to proceed with the work.

Section 26. APPEAL OF NOTICE OF VIOLATION

- A. Any Entity receiving a notice of violation may appeal the determination of violation to the effect that a Notice of Violation or Order served in accordance with this ordinance is in error, or should, due to hardship, be modified or entitled to a variance from enforcement, or that a reasonable extension of time for the compliance should be granted upon the grounds of a demonstrated case of hardship and evidence of an actual undertaking to correct the violation, together with a legitimate intent to comply within a reasonable time period, may appeal to the Westfield City Council; for rescission of the Notice or Order, or for a modification, variance, or extension of time for compliance.
- B. A request for rescission, modification, variance, or extension of time shall be made in writing, to the City of Westfield Clerk/Treasurer's Office, to be placed on the Westfield City Council agenda, within ten (10) days of the Appellant's receipt of a copy of the Notice or Order. The Westfield City Council shall schedule a hearing within thirty (30) days of receipt of the request.
- C. All hearings before the Westfield City Council shall be open to the public. The appellant, the appellant's representative, and any persons whose interests are affected shall be given an opportunity to be heard.
- D. Prior to ruling on an appeal, the Westfield City Council shall make the following findings:
 - 1. The violator was served with a Notice or Order

2. The Notice or Order that was served stated the specific nature of the violation; corrective action to be taken to abate the violation; and a specific time period for abatement of violation.
 3. Within the time period stipulated by the Notice or Order, the violator failed to comply by not abating the violation, and/or not bringing into compliance with this ordinance.
 4. Upon expiration of the date indicated for compliance in the Notice or Order, the premises was being maintained in violation of specific provisions of this ordinance and/or conditions imposed by the Westfield City Council as a prerequisite to the modification of a previous compliance order.
 5. Determination that a violation exists on the premises.
- E. At the conclusion of the hearing at which a continuance is not granted, the Westfield City Council may reverse, affirm, or modify the Order, Notice, requirement, decision or determination appealed from, and may make such Order, requirement, decision or determination as justice would require. The Westfield City Council's determination and findings of fact shall be recorded and if a Notice or Order is affirmed or modified, the Westfield City Council shall, in the determination on appeal, reestablish a reasonable timeline to make the repairs and improvements required to bring the dwelling unit or structure into compliance with the provisions of this ordinance.
- F. Any entity, whether or not a previous party of the appeal, shall have the right to apply to the appropriate court for a writ of certiorari to correct errors of law.
- G. Appeals of notices and orders (other than Imminent Danger notices) shall stay the enforcement of the notice and order until the Westfield City Council rules on the appeal.

Section 27. TRANSFER OF OWNERSHIP

No owner of any premise upon whom a Notice of Violation has been served shall sell, transfer, mortgage, lease or otherwise dispose of to another until the provisions of the Notice of Violation have been complied with, or until such owner first furnishes the grantee, transferee, mortgagee or lessee a true copy of any compliance order or Notice of Violation issued by the City of Westfield and furnishes to the City of Westfield a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such Notice of Violation and fully accepting the responsibility without condition for making corrections or repairs required by such Notice of Violation.

Section 28. PENALTIES FOR VIOLATIONS

Any person found in violation of any provisions of this Ordinance shall be responsible for a civil infraction and subject to a maximum fine of \$1,000 for the first offense, and a maximum of \$10,000 for a subsequent offense, plus cost, damages, and expenses. Each day such violation occurs or continues shall be deemed a separate offense and shall make the violator liable for the imposition of a fine for each day. The rights and remedies

provided for in this section are cumulative and in addition to any other remedies provided by law. An admission or determination of responsibility shall not exempt the offender from compliance with the requirements of this Ordinance.

Any person who aids or abets a person in violation of this Ordinance shall be subject to the penalties provided in this section.

For purposes of this section, “subsequent offense” means a violation of the provisions of this Ordinance committed by the same person within 12 months of a previous violation of the same provision of this Ordinance for which said person admitted responsibility or was adjudicated to be responsible.

Section 28. **FULL FORCE AND EFFECT**

This Ordinance shall be in full force and effect from and after its passage, signing by the Westfield City Council and publication as required by law.

All ordinances or parts thereof in conflict with the provisions of the Ordinance are hereby repealed.

ADOPTED AND PASSED THIS _____ DAY OF _____ 2005, BY THE
WESTFIELD CITY COUNCIL, HAMILTON COUNTY, INDIANA.

WESTFIELD CITY COUNCIL

<u>Voting For</u>	<u>Voting Against</u>	<u>Abstain</u>
_____ Teresa Otis Skelton	_____ Teresa Otis Skelton	_____ Teresa Otis Skelton
_____ Jack Hart	_____ Jack Hart	_____ Jack Hart
_____ David Mikesell	_____ David Mikesell	_____ David Mikesell
_____ Bob Smith	_____ Bob Smith	_____ Bob Smith
_____ Ron Thomas	_____ Ron Thomas	_____ Ron Thomas

ATTEST:

Clerk-Treasurer, Cindy Gossard

Prepared by Bruce Hauk, WPW Director

